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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/804,529

03/19/2004

Patrick Crosbie

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WOODBURY, NY 11797

EXAMINER

LE, MARK T

ART UNIT

PAPER NUMBER

3617

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|-----------|---------------|
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3 MONTHS

03/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/804,529 | | CROSBIE ET AL. | |
| | Examiner | | Art Unit | |
| | Mark T. Le | | 3617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 5, 9, 12, 14, 21, 24, 26-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 10, 11, 13, 15-20, 22, 23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election with traverse of Group I, claims 1-8, 10, 11, 13, 15-20, 22, 23, 25, in the reply filed on March 6, 2007 is acknowledged. The traversal is on the ground that the different features of the different embodiments can be employed as options in the structure recited in the instant independent claims. This is not found persuasive because those different features are not parts of the elected embodiment, but rather are parts of the different embodiments having materially different designs, mode of operation or effect, which falls in the criteria for establishing a proper election requirement.

Claim 5 is also withdrawn from further consideration because it does not read on the elected embodiment of Figures 1-3, which is a rail traveling structure. As to Applicant's argument that all claims 1-26 should be examined together because claims 2-14 and 16-26 depend from the elected independent claims 1 and 15. As per this election requirement, claims drawn to non-elected embodiments are withdrawn from further consideration; however, upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species, which depend from or otherwise require all the limitation of an allowable generic claim.

The requirement is still deemed proper and is therefore made FINAL.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Nijenhuis (US 6,401,624).

Nijenhuis discloses a portable platform structure as recited in the instant claims, including platform 15, a trolley under the platform including wheels 16, and suspension system 17, which includes pneumatic means to allow adjustment and positioning of the platform.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nijenhuis (US 6,401,624) in view of Hogue (US 4,224,880).

Nijenhuis is applied above.

Regarding the instant claimed platform including planks, as recited in instant claim 8, consider railcar floor of Hogue, which is formed by planks. In view of Hogue, it would have been obvious to one skilled in the art to form the platform (floor) structure of Nijenhuis by using planks, in a manner similar to that taught by Hogue, so as to achieve the expected advantages thereof.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nijenhuis (US 6,401,624) in view of Farmer (US 1,980,329).

Nijenhuis is applied above.

Regarding the instant claimed braking system, as recited in instant claim 13, it is noted that Nijenhuis does not show a braking system; however, braking system for use in a rail traveling structure is well known. Note for example, the rail wheel brake system shown in Farmer. Therefore, it would have been obvious to one skilled in the art to include a braking system, as for example shown in Farmer, in the structure of Nijenhuis so as to perform the expected braking function thereof.

7. Claims 7 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nijenhuis (US 6,401,624) in view of Fowler (US 2,190,708).

Nijenhuis is applied above.

Regarding the instant claimed extendable ramp, as recited in instant claim 7, consider the extendable ram of Fowler. In view of Fowler, it would have been obvious to one skilled in the art to also include extendable ramps, similar to that of Fowler, on the structure of Nijenhuis so as to allow the platform to bridge gaps in situations where a

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permanent platform, similar to that shown in Figure 2 of Fowler, is located at a distance from the traveling platform.

Regarding the instant claimed railings, as recited in instant claims 10-11, consider Figure 5 of Fowler; wherein, the ramps of Nijenhuis, as modified, are positioned vertically as railings as required by the instant claims.

8. Claims 6 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nijenhuis (US 6,401,624) in view of Coath (US 701,469).

Nijenhuis is applied above.

Regarding the instant claimed steering mechanism, as recited in instant claim 6, consider the steering mechanism Coath in the form of a pivot. In view of Coath, it would have been obvious to one skilled in the art to include a steering mechanism, similar to that taught by Coath, in the structure of Nijenhuis so as to allow the rail traveling structure to negotiate track curves.

Regarding the instant claimed positioning system providing vertical and horizontal adjustment, as recited in instant claim 15, consider the positioning system of Nijenhuis, as modified, which includes the pivot, similar to that of Coath, for horizontal adjustment and air springs 17 for vertical adjustment.

Regarding the instant claimed intended use, as recited in instant claim 16, note that since the structure of Nijenhuis, as modified, is capable of the instant claimed intended use, the instant claimed intended use limitation of considered met.

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9. Claims 19 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied in claim 15 above and further in view of Fowler (US 2,190,708).

Regarding the instant claimed extendable ramp, as recited in instant claim 19, consider the extendable ram of Fowler. In view of Fowler, it would have been obvious to one skilled in the art to also include extendable ramps, similar to that of Fowler, on the structure of Nijenhuis so as to allow the platform to bridge gaps in situations where a permanent platform, similar to that shown in Figure 2 of Fowler, is located at a distance from the traveling platform.

Regarding the instant claimed railings, as recited in instant claims 22-23, consider Figure 5 of Fowler; wherein, the ramps of Nijenhuis, as modified, are positioned vertically as railings as required by the instant claims.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied in claim 15 above and further in view of Hogue (US 4,224,880).

Regarding the instant claimed platform including planks, as recited in instant claim 20, consider railcar floor of Hogue; which is formed by planks. In view of Hogue, it would have been obvious to one skilled in the art to form the platform (floor) structure of Nijenhuis by using planks, in a manner similar to that taught by Hogue, so as to achieve the expected advantages thereof.

11. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied in claim 15 above and further in view of Farmer (US 1,980,329).

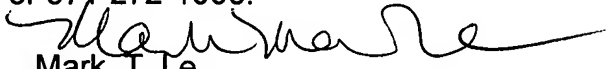
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Regarding the instant claimed braking system, as recited in instant claim 25, it is noted that Nijenhuis does not show a braking system; however, braking system for use in a rail traveling structure is well known. Note for example, the rail wheel brake system shown in Farmer. Therefore, it would have been obvious to one skilled in the art to include a braking system, as for example shown in Farmer, in the structure of Nijenhuis so as to perform the expected braking function thereof.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri, between 9AM-3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Mark T. Le
Primary Examiner
Art Unit 3617

mle
3/27/07